IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.692 OF 2006

Madhav Bhaguji Handore ..Applicant.

V/s

State of Maharashtra ..Respondents.

Ms. Smita Gaidhani for the applicant.
Mr. R.Y. Mirza, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 8th March, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested in connection with C.R. No.I-89 of 2005 registered at Wavi Police Station for the offence punishable under sections 302, 143, 147, 148, 149, 452, 323, 504 and 506 of the Indian Penal Code.

3. It is the case of the prosecution that there was a dispute between the applicant and his brothers and the deceased and his brothers and family members. The applicant and the deceased are real brothers and the case has been filed by the deceased in the court seeking partition of the land. The prosecution case is that the applicant and others had threatened the deceased to withdraw the said case. However, the

deceased refused to withdraw the said case. The applicant and his brothers went to the house of the deceased and assaulted him and, as a result of the said injury which was inflicted by the applicant and his brothers, the deceased succumbed to the injuries. The incident in question took place at about 2.45 p.m. to 3.30 P.M. and the daughter of the deceased immediately went to the Police Station and informed the Police at 15.45 P.M. The entry in the station diary was made and the police vehicle was sent and the father of the complainant was admitted in the hospital. The FIR, however, was registered at 11.45 p.m. and, in the said FIR, the complainant stated that the applicant entered his house and he sat on the chest of the deceased and the other accused assaulted him with sticks on his head and, thereafter, he was taken out of the house and was assaulted by all the accused.

4. The learned Counsel for the applicant has submitted that there is delay in recording the FIR and, therefore, there was every possibility of false implication of the applicant. She submitted that even the FIR was not sent to the Court immediately but it was sent after a lapse of two days. She submitted that the applicant is a Subedar in the Indian Army and

is posted at Maratha Light Infantry Regimental Centre at Belgaum.

5. The learned APP appearing on behalf of the State vehemently opposed the said application. He invited my attention to the complaint which was filed by the daughter of the deceased in which a specific role was attributed to the present applicant. He also invited my attention to the post-mortem notes which corroborated the oral testimony of the complainant. He submitted that, therefore, this is not a fit case for grant of bail.

6. After having considered the rival submissions, in my view, there is delay in filing the FIR which has not been properly explained. The station diary indicates that the daughter of the deceased had gone to Police Station at 15.45 P.M. but only station diary entry was made. The concerned constable could have recorded the FIR immediately at 15.45 P.M. itself. However, only the entry in the station diary is made and, thereafter, the complaint is lodged at 11.45 P.M. It is a common knowledge that in cases where there is a family feud between the brothers over the ancestral property, there is always tendency of implicating the names of all the members of the

family. In view of this, the delay in lodging the FIR assumes importance particularly when we are at the stage of grant of bail. The investigation is over. A charge-sheet has been filed. The applicant, in any case, is posted at Belgaum and, therefore, there is no possibility of the applicant tampering with the evidence and threatening the witnesses.

7. In these circumstances, therefore, the applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. He shall report to the nearest Police Station at Belgaum once in a month. The applicant shall not threaten any of the prosecution witnesses.

8. It is clarified that the trial court shall not be influenced by any observation made by this Court in this order and it may not be construed as an expression of opinion on the merits of the case. It is clarified that the applicant shall report to Sessions Court after the case is committed and shall regularly attend the dates in the Sessions Court.

9. Application is accordingly disposed of.

V.M. KANADE, J.